INDIANA JUDICIAL CENTER

CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

VOL. XXVIII, NO. 35 **December 14, 2001**

CRIMINAL LAW ISSUES

FRANCIS v. STATE, No. 49S00-9909-CR-473, ___ N.E.2d ___ (Ind. Nov. 30, 2001).
RUCKER, J.

III.

Francis next complains the trial court erred by imposing sentences for robbery as Class B felonies. . . .

There are three felony classes of robbery:

> A person who knowingly or intentionally takes property from another person or from the presence of another person:
> (1) by using or threatening the use of force on any person; or
> (2) by putting any person in fear;
> commits robbery, a Class C felony. However, the offense is a Class B felony if it is committed while armed with a deadly weapon or results in bodily injury to any person other than a defendant, and a Class A felony if it results in serious bodily injury to any person other than a defendant.

Whether robbery as a Class B felony is either an inherently included or a factually included lesser offense of robbery as a Class A felony depends on the wording of the charging information. In this case, with respect to each of the three victims, the charging informations read in pertinent part:

> Stacy M. Francis, Amanda Jones and Thomas A. Dangerfield, A/K/A Anthony T. Dangerfield, on or about the 9th day of April, 1998, did knowingly take from the person or presence of [named victim] property, that is: United States currency and cocaine, by putting [named victim] in fear or by using or threatening the use of force on [named victim], which resulted in serious bodily injury, that is: mortal gunshot wounds to Dewaun Sanders[.]

R. at 157-58. As charged, it is apparent that the bodily injury variety of Class B felony robbery is an inherently included lesser offense of robbery as a Class A felony. However, as the trial court correctly determined, because death of the victim supported the murder conviction as well as elevating robbery to a Class A felony, principles of double jeopardy prohibited sentencing Francis to A felony robberies. The same double jeopardy concerns are posed by sentencing Francis to the bodily injury variety of Class B felony robbery.

The question here is whether the charging informations sufficiently allege the "armed with a deadly weapon" variety of Class B felony robbery such that it is a factually included

lesser offense of robbery as a Class A felony. The State answers affirmatively citing in support Smith v. State, 445 N.E.2d 998 (Ind. 1983). In that case, the defendant was charged with attempted robbery as a Class A felony. . . . The information charged in pertinent part:

> Larry David Smith did knowingly attempt to take property, to wit U.S. currency, by using and threatening the use of force, to wit a firearm or bomb, thereby putting Roger Smith in fear and causing bodily injury to Roger Smith.

Id. at 999. Because the information did not allege that he committed the act "while armed with a deadly weapon," defendant Smith complained that the information did not allege robbery as a Class B felony. Id. Unpersuaded, this Court held:

> Though it is undoubtedly preferable for an information for Attempted Robbery, Class B felony, to contain the phrase "while armed with a deadly weapon", [] absent proof that the accused was misled by the phraseology employed, we do not think that such a phrase is imperative to satisfy the due process requirement of notice.

[Citation omitted.]

. . . We disagree that Smith provides the answer in this case. A fair reading of the information in that case shows that implicitly the defendant was "armed." The only question was the flexibility the Court would allow in the terminology used to allege "with a deadly weapon." Smith, 445 N.E.2d at 999. As the Court pointed out, a firearm is a deadly weapon. See I.C. § 35-41-1-8(a). Thus, the defendant could not have been misled by an information using words sufficiently similar in meaning to those used in the robbery statute. Smith, 445 N.E.2d at 999.

The case before us is different. It may be true that only a deadly weapon can inflict a gunshot wound. Here, however, it cannot be said that the phrase "mortal gunshot wound" was contemplated to put Francis on notice that he was being charged with the "armed with a deadly weapon" variety of robbery. Rather, the phrase describes the bodily injury - death - to the victim. In essence, it serves to emphasize that the information is alleging a Class A felony robbery. We conclude therefore that the informations in this case did not sufficiently allege the armed with a deadly weapon variety of Class B felony robbery, and thus it was not a factually included lesser offense of robbery as a Class A felony. Accordingly, we vacate Francis' sentences for the three robberies as Class B felonies and remand this cause to the trial court for a new sentencing order that imposes sentences for Class C felony robberies.

. . . .

SHEPARD, C. J., and SULLIVAN, J., concurred.

DICKSON, J., concurred in part and dissented as to Part III without issuing a separate written opinion.

BOEHM, J., concurred in part and dissented as to Part III"on the ground that the information charged infliction of a gunshot wound, which is sufficient to put the defendant on notice that he is charged with robbery armed with a deadly weapon."

DESJARDINS v. STATE, No. 31S01-0111-CR-560, ___ N.E.2d ___ (Ind. Dec. 6, 2001).

BOEHM, J.

In the course of its opinion, the Court of Appeals considered DesJardins' contention that the trial court erred by admitting portions of the videotapes but refusing to permit DesJardins to show the entire four hours of tape to the jury. DesJardins v. State, 751 N.E.2d 323, 325-27 (Ind. Ct. App. 2001). . . .

The Court of Appeals held that a videotape is not a writing or recording within the meaning of Rule 106 because a videotape is not included in the list of "Writings and recordings" set forth in Rule 1001(1).[1] By contrast, Rule 1001(2) defines "Photographs" to include "still photographs, x-ray films, videotapes, and motion pictures." Evid. R. 1001(2). As a result, the Court of Appeals reasoned that "by definition, Rule 106 does not apply to the admission of videotapes." 751 N.E.2d at 326.

[1] That list includes "letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation." Ind. Evidence Rule 1001(1).

We grant transfer to make clear that all modes of conveying information, including videotapes, constitute writings or recordings for purposes of Rule 106, even if they are defined by Rule 1001 as "photographs." As Rule 1001 explicitly states, its definitions are "for purposes of this Article" of the Indiana Rules of Evidence. "[T]his Article" is Article X, which deals with "Contents of Writings, Recordings and Photographs," and contains a number of provisions that treat "writings and recordings" differently from "photographs." But the purpose of Article X is to address issues raised by the various means of reproduction of the several media, such as what a "duplicate" or "original" means in the context of technology that includes photographs, videotapes, etc. The definitions are by their terms limited to that Article of the Rules of Evidence.

On the other hand, Rule 106 is located in Article I, deals with substantive fairness, and embodies a doctrine recognized at common law long before Thomas Edison, Edwin Land or Bill Gates was heard from. . . . [T]he doctrine is wholly independent of the peculiarities of the technology by which any particular medium transmits information, and applies to any mode of conveying information, including those identified for purposes of Article X as "photographs." . . .

Although we agree with DesJardins that the doctrine of completeness embodied in Rule 106 is applicable to the videotapes in question, we agree with the Court of Appeals in its alternative holding that DesJardins fails to demonstrate the relevance of the absent portions about which he complains. . . .

. . . .

SHEPARD, C. J., and DICKSON, RUCKER, and SULLIVAN, JJ., concurred.

BRADSHAW v. STATE, No. 29A02-0106-CR-366, ___ N.E.2d ___ (Ind. Ct. App. Dec. 5, 2001).

VAIDIK, J.

James E. Bradshaw brings this interlocutory appeal challenging the trial court's denial of his motion to suppress evidence, namely marijuana detected on his person by a canine sweep that took place during a routine traffic stop of a vehicle in which he was a passenger. . . .

Bradshaw was a passenger in Henry V. Chalfont's truck when Officer John Douglas Grishaw, a canine officer with the Arcadia Police Department, pulled the vehicle over because it did not have an operating light illuminating the license plate. Once the vehicle was stopped, Officer Grishaw approached the driver's side of the vehicle and asked Chalfont for his license and registration. As he was doing this, Officer John L. Woods, also of the Arcadia Police Department, arrived at the scene to assist. Officer Grishaw handed the license and registration to Officer Woods to run a license and warrants check on Chalfont. While Officer Woods ran the license and warrants check, Officer Grishaw and his canine, Justice, conducted a canine sweep around the vehicle, based on information that Chalfont and Bradshaw were involved with marijuana. During the canine sweep, Justice sat down at the passenger side door signaling the presence of illegal narcotics in the vehicle.

. . . Officer Grishaw asked Bradshaw to exit the vehicle so that a pat down search could be performed. In the course of patting down Bradshaw, Officer Grishaw found a bag containing marijuana and a partially smoked marijuana cigarette inside a tin located in the jacket Bradshaw was wearing. . . .

. . . .

It is well-settled that a canine sweep is not a search within the meaning of the Fourth Amendment. [Citations omitted.] While a canine sweep is not a search, upon the completion of a traffic stop, an officer must have reasonable suspicion of criminal activity in order to proceed thereafter with an investigatory detention. [Citations omitted.] The critical facts in determining whether a vehicle was legally detained at the time of the canine sweep are whether the traffic stop was concluded and, if so, whether there was reasonable suspicion at that point to continue to detain the vehicle for investigatory purposes. [Citation omitted.] . . . The burden is on the State to show that the time for the traffic stop was not increased due to the canine sweep. [Citation omitted.] In assessing whether a detention is too long in duration, we examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly. [Citations omitted.]

. . . .

Based on the testimony presented at the suppression hearing, the trial court concluded that the canine sweep, which lasted approximately one minute, was conducted prior to the officers receiving information back from dispatch on the license and warrants check. Thus, the canine sweep was completed before the traffic stop was concluded. Because the traffic stop was not yet concluded at the time of the canine sweep, we need not reach the issue of whether Officer Grishaw possessed reasonable suspicion to detain the vehicle for an additional period of time in order to conduct the canine sweep. [Citation omitted.]

While we recognize that our holding in this case may be subject to abuse, we trust the trial courts to carefully weigh the evidence and to be vigilant in ensuring that the State

meets its burden of showing that the traffic stop was no longer than necessary given the circumstances surrounding a particular stop. . . .

. . . .

BARNES and FRIEDLANDER, JJ., concurred.

MORGAN v. STATE, No. 71A04-0104-CR-164, ___ N.E.2d ___ (Ind. Ct. App. Dec. 5, 2001).
MATTINGLY-MAY, J.

Detective Bruce Villwock read Morgan his *Miranda* rights and Morgan signed a form indicating he understood them. Detective Villwock asked Morgan if he was willing to make a statement, and Morgan replied "I feel more comfortable with a lawyer." [Citation to

Record omitted.] The detective asked "So you don't want to talk to me at this time?" [citation to Record omitted], and Morgan shook his head no.

The detective reminded Morgan that the police had evidence against him and that Morgan would be taken to jail and booked on the murder charge. He told Morgan how to contact him if Morgan wanted to "think about it and talk it over with a lawyer or somebody," [citation to Record omitted], and then decided to make a statement. He reminded Morgan that it was in Morgan's best interest to cooperate, and again asked Morgan "Are you willing to talk or do you still want a lawyer?" [Citation to Record omitted.] Morgan nodded his head, and the detective left to get a waiver form. After the detective returned, the following exchange took place:

> CORPORAL VILLWOCK: Joe, this is Commander Swanson. Now you wish to talk to me at this time; right?
>
> MR. MORGAN: Yes.
>
> CORPORAL VILLWOCK: And even though a minute ago you stated you wanted an attorney, right now you are stating you have changed your mind and don't want an attorney and want to give me a statement; is that correct?
>
> MR. MORGAN: Right.

[Citation to Record omitted.] Morgan then signed a form indicating he had previously requested a lawyer but now waived that right. The statement that followed amounted to a confession by Morgan that he killed Davis.

. . . .

Taylor contended his *Miranda* rights were violated when police continued to question him after he said: "I don't know what to say. I guess I really want a lawyer, but, I mean, I've never done this before so I don't know." [Citation to Record omitted.] At the beginning of the interrogation, Taylor had signed a written waiver of rights form and orally acknowledged that he had been advised of his rights and had agreed to waive them.

. . . The level of clarity required to meet the reasonableness standard is sufficient clarity that a "reasonable police officer in the circumstances would understand the statement to be a request for an attorney." [Citations omitted.] . . .

In *Davis* [*v. United States*, 512 U.S. 452 (1994)], the defendant's statement "maybe I should talk to a lawyer" was held not to be a request for counsel. [Citation omitted.] . . . The *Taylor* [*v. State*, 689 N.E.2d 699 (Ind. 1997)] court interpreted *Davis* as establishing as a matter of Fifth Amendment law that police have no duty to cease questioning when an equivocal request for counsel is made. Nor are they required to ask clarifying questions to determine whether the suspect actually wants a lawyer. [Citation omitted.]

Our supreme court characterized Taylor's statement of "I guess I really want a lawyer, but, I mean, I've never done this before so I don't know" as an expression of doubt, not a request. A reasonable police officer in the circumstances would not understand that Taylor was unambiguously asserting his right to have counsel present. [Citation omitted.]

Here, by contrast, it is apparent in light of the totality of the circumstances that even if Morgan's statement could, standing alone, be considered "equivocal," the officer who was questioning Morgan reasonably understood that Morgan was asserting his right to have counsel present. Still, the officer chose not to break off communication with Morgan.

. . . .

Even though Morgan's confession should not have been entered into evidence, the trial court's error was harmless. . . .

. . . .

BROOK, J., concurred.

BARNES, J., issued a separate written in which he concurred, in part, as follows:

In this case, the dialogue between the detective investigating the crime and Morgan was clear, distinct and unmistakable. "I feel more comfortable with a lawyer" is not a phrase subject to interpretation. Like Horton the Elephant of children's books, that phrase means what it says and says what it means.

Because there was other overwhelming evidence of guilt here, this conviction is affirmed. Absent such evidence, I would not have reached this conclusion.

WILLIAMS v. STATE, No. 71A03-0012-PC-472, ___ N.E.2d ___ (Ind. Ct. App. Dec. 12, 2001).

MATHIAS, J.

Brandon C. Williams ("Williams") was convicted of assisting a criminal, [footnote omitted] a Class C felony, in St. Joseph Superior Court. The trial court sentenced him to eight years and gave him pre-sentence jail credit of 487 days. The sentence was then suspended, and Williams was placed on probation for eight years. As a condition of probation, Williams was ordered to serve seven years in the Department of Correction. The trial court did not give him credit for the 487 days he was in jail prior to his sentencing. . . .

. . . .

. . . [2]

. . . .

Williams argues that the trial court erred when it failed to give him credit for pre-sentence jail time of 487 days against his period of probation. [Footnote omitted.] The facts of this case are nearly identical to the facts in Sutton v. State, 562 N.E.2d 1310 (Ind. Ct. App. 1990), trans. denied. In Sutton, the defendant was convicted of battery, a Class C felony, and sentenced to eight years with credit given for the 352 days he was incarcerated prior to trial. [Citation omitted.] . . . The defendant was ordered to serve seven years in prison as a condition of probation, and the trial court stated, "the time served of 352 days shall not apply to the term of imprisonment ordered as a condition of probation." Id. at 1311-12.

A panel of this court held that the trial court did not err when it sentenced the defendant, stating:

> [n]o statute or other law required the court to also credit the time served before trial towards the probation it ordered for Defendant. . . . . .

[Citation omitted.] [J]udge Baker dissented arguing that a trial court cannot suspend a sentence that has already been executed. [Citation omitted.] Judge Baker noted that Sutton received Class I credit for the 352 days of incarceration prior to trial, for a total of 704 days credit; therefore, Sutton "was thus left with six years and twenty six days on his maximum eight-year sentence." [Citation omitted.] Judge Baker argued that the trial court could not suspend more than six years and twenty-six days, because a portion of a sentence that has already been executed cannot be suspended. [Citation omitted.] . . .

We disagree with the conclusion reached by the majority in Sutton and decline to follow it here. . . .

. . . .

In this case, Williams served 487 days in jail prior to his sentencing; therefore, he is entitled to credit time of 974 days, or two years and 244 days. Williams' eight-year sentence was suspended and he was placed on probation for eight years. The trial court's failure to give him credit time has the effect of actually giving Williams a sentence of 10 years and 244 days. This exceeds the eight-year statutory maximum for a C felony conviction and is an illegal sentence. [Citations omitted.]

. . . [W]e reduce Williams' aggregate sentence of eight years probation by 974 days; therefore, Williams is ordered to serve five years and 121 days in the Department of Correction as a condition of his probation.

. . . .

---

[2] The trial court noted that Williams would have actually received 974 days of credit because a person who is incarcerated awaiting trial and sentencing earns one day of credit time for each day served. See Ind. Code § 35-50-6-3 (1998).

DARDEN and VAIDIK, JJ., concurred.

CIVIL LAW ISSUES

BUSHONG v. WILLIAMSON, No. 54A01-0103-CV-100, ___ N.E.2d ___ (Ind. Ct. App. Nov. 27, 2001).

SULLIVAN, J.

David Williamson is a teacher for the South Montgomery School Corporation . . . . [H]e was involved in an incident with two students in his physical education class. While playing kickball with his fifth grade physical education class, he tagged Jonathan Bushong out. Jonathan then kicked Mr. Williamson in the buttocks. When Jonathan attempted to kick Williamson a second time, after receiving a verbal warning not to kick him again, Williamson caught Jonathan's foot in mid-air and picked him up by his foot. While holding Jonathan in the air, he carried him a short distance. After Williamson set Jonathan on the floor, but while still holding Jonathan's feet over his head, Williamson struck Jonathan at least twice in the buttocks. . . .

Pursuant to Ind.Code § 34-13-3-8 (Burns Code Ed. Repl. 1998), a Notice for Claim Under the Indiana Tort Claims Act (Notice) was filed on behalf of Jonathan Bushong on August 4, 1998, and was received on August 10, 1998, by both the School and the Indiana Political Subdivision Risk Management Commission.

Gary and Donna Bushong then filed a complaint against Williamson personally, ... [Footnote omitted.] In their complaint, the Bushongs listed Williamson's act as being both a battery [footnote omitted] against their son and an interference with their property right [footnote omitted] in their son. Williamson then filed a motion for summary judgment which was granted by the trial court.

. . . .

The trial court found as a matter of law that the acts of Williamson, which led to the

lawsuit by the Bushongs, occurred within the scope of Williamson's employment. The trial court also found that because the acts were within the scope of employment, Williamson was entitled to notice under the Indiana Tort Claims Act (Act). We disagree with the trial court's reasoning as to the act occurring within the scope of employment and also hold that the trial court misapplied the law with regard to notice under the Act. . . .

. . . .

Indiana Code § 34-13-3-5(a) states, "[a] lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint and bars an action by the claimant against the employee personally." I.C. § 34-13-3-5(b) provides:

"A lawsuit filed against an employee personally must allege that an act or omission of the employee that causes a loss is:
(1) criminal;
(2) clearly outside the scope of the employee's employment;
(3) malicious;
(4) willful and wanton; or
(5) calculated to benefit the employee personally."

. . . Section 5(a) was amended in 1995 to include the above language specifically restricting lawsuits which allege that the action was within the scope of employment to be brought against the governmental entity only and not the employee personally. [Footnote omitted.] It also allowed for a complaint to be amended and brought against an employee personally if the government entity used as an affirmative defense that the action was committed outside the scope of employment. . . .

The trial court misread I.C. § 34-13-3-5 and misconstrued the legislative intent in regard to the Act. We hold that the language of Section 5(a) means that a lawsuit may not be brought against a government employee personally if the complaint, on its face, alleges that the action leading to the claim occurred within the scope of employment. Generally, a court will look to all parts of the pleadings and designated materials in determining whether to grant a motion for summary judgment. [Citations omitted.] However, the language of Section 5(a) restricts the court's ability to look at documents outside of the complaint for purposes of determining whether or not the plaintiffs allege that the act occurred within the scope of employment.

In the order granting summary judgment, the trial court found that the Bushongs' pleadings and discovery responses characterized Williamson's actions as being within the scope of employment. The support that the trial court uses for this conclusion is that the Notice provided to the School stated that Williamson's "actions were done within the scope of Williamson's employment." [Citation to Brief omitted.] The trial court also referenced language from the complaint that stated, "Defendant, David Williamson, is a physical education teacher at South Montgomery School Corporation," [citation to Brief omitted] and the Bushongs' response to an Interrogatory which stated that Williamson acted "as an employee of a school corporation, while engaged in his official duty on school property." [Citation to Brief omitted.] The trial court thereby concluded that the Bushongs alleged in their complaint that the actions were within Williamson's scope of employment. We respectfully disagree with the trial court's reasoning.

In the complaint the Bushongs' filed, they did not allege that Williamson committed the act while in the scope of employment. The complaint only acknowledged that Williamson was a teacher. Such allegation does not constitute an allegation that the act took place within the scope of employment.[5]

It would appear from the matters of record, though not from the Complaint itself, that

the acts of Williamson took place while he was in the course of his employment. "In the course of employment" is used in a temporal and spatial context. It refers to the time, place, and circumstances under which the act took place. [Citation omitted.] Acting in the course of one's employment is not the same as acting within the scope of that employment. "Scope of employment" focuses upon the relationship between the act complained of and the nature and duties of the employment itself. [Citation omitted.]

. . . Indiana Code § 34-13-3-5(a) does not say that the language of the complaint is conclusive to whether the act was within the scope of employment, but only that if the complaint alleges that the act was within the scope of employment it may not be brought against the employee personally. Instead, the action must be brought against the governmental entity.

The trial court also erred in considering the answer to the Interrogatory and the phrasing of the Notice [footnote omitted] in deciding whether the claim alleged that the act was within the scope of employment. The wording of I.C. § 34-13-3-5(a), that "a lawsuit alleging that an employee acted within the scope of the employee's employment must be exclusive to the complaint," clearly states that the court must look only to the face of the complaint in determining whether the plaintiff alleges that the act occurred within the scope of employment. [Footnote omitted.]

In addressing the correctness of the trial court's decision, we also must address the question of whether, as a matter of law, Williamson's actions could be within the scope of employment. . . .

. . . .

Here, a jury under the evidence might reasonably find that Williamson was disciplining Jonathan and that the acts were authorized, putting them within the scope of employment. A jury could also find that the acts were disciplinary but went beyond any authorization from the school because of the severity of the contact and were therefore outside the scope of employment. A jury could also find that the act was horseplay, and once again, that it could have either been within the scope of employment or outside the scope of employment. The facts here present a dispute as to whether Williamson's acts were authorized or unauthorized. The issue for resolution is one for the trier of fact. [Footnote omitted.]

---

[5] Since the date that summary judgment was granted in this case, another panel of this court has addressed this same issue. In Miner v. Southwest School Corporation, 755 N.E.2d 1110 (Ind. Ct. App. 2001) that panel seemed to rely upon the fact that the complaint stated that the individual was a school superintendent and that he "may have been working in that capacity at the time" of the accident. However, it does not appear that the court was holding that those words meant that the accident occurred while the superintendent was in the scope of employment, but instead that the statement did not lend credence to plaintiff's argument on appeal that the action occurred clearly outside the scope of employment. This is further supported by the court noting that the plaintiff originally had pursued the lawsuit against the superintendent upon the grounds that he acted willfully and wantonly.

Appellants also claim that the trial court erred by determining that I.C. § 34-13-3-8 required notice to be given to Williamson before a claim could be brought against him personally. The trial court determined that case law in Indiana required that notice be given to the employee when the employee was personally sued and the acts leading to the lawsuit were within the reach of the Act.

. . . [C]ase law and the Act only require that notice be provided to the governmental entity when the employee is sued personally. [Citations omitted.] When the plaintiff is sued personally, notice is only required to the government if the act occurred within the scope of employment. [Citation omitted.]

In this case, no notice was given to Williamson because no notice was required. . . .

Because no notice was required to Williamson, the question becomes: when may an action be maintained against an employee personally and when must notice be provided to the governmental entity. As stated above, when an employee is sued personally, but the government is not sued, notice is only required to the government if the act or omission

occurred within the scope of employment. [Citation omitted.][9] An act or omission is deemed to have occurred within the scope of an individual's employment if the act is done by one acting as the employer's alter ego or according to the employer's direct order. [Citation omitted.]

A reading of I.C. § 34-13-3-5(a) in isolation would seem to strongly imply that if the acts of the employee are within the scope of employment, the employee may neither be sued personally nor be subject to a judgment for the damage or injury. Such is not the case, however.

The legislature has declared that there are times when it is appropriate to sue the employee personally. This is true whether or not the facts as they ultimately unfold reflect that the employee's actions were within the scope of his employment, so long as the

complaint itself does not allege that the employee acted within the scope of his employment. This seeming anomaly is demonstrated by I.C. § 34-13-3-5(c) which requires the governmental entity to pay a judgment against the employee when the employee's act was within the scope of employment "regardless of whether the employee can or cannot be held personally liable for the loss," and by I.C. § 34-13-3-5(d) which requires the governmental entity to provide counsel and pay all costs and fees incurred by an employee in defense of a claim or suit for acts within the scope of employment, "regardless whether the employee can or cannot be held personally liable for the loss." . . .

. . . .

In effect, the Act as written allows for an individual to sue the employee personally even if the act or omission in question occurred within the scope of employment. The only limit to a suit being brought against the individual is that the complaint, on its face, not allege that the act occurred within the scope of employment, and it must meet one of the other criteria listed in Section 5(b).

. . . .

In the present case, Donna and Gary Bushong did not allege that the act occurred within the scope of employment. As required in Section 5(b), they alleged that the contact was criminal and provided a reasonable factual basis that a battery may have occurred. Based on these facts and the above analysis, we conclude that the Bushongs complied with the requirements of Section 5(b) of the Act and that there is a question of fact as to whether the contact was within the scope of employment. In so determining, we hold that the trial court misapplied the appropriate law and that the designated evidence does not indicate that Williamson has met his burden of proving that no genuine issue of material fact exists.

---

[9] Notice to the governmental entity was and is required because of the duty of the government to pay a judgment, provide counsel, and pay costs for the employee's defense. [Citation omitted.]

Therefore, summary judgment as to whether Williamson's act was within the scope of employment was inappropriate in this case.

. . . .

RILEY, J., concurred.

FRIEDLANDER, J., filed a separate written opinion in which he dissented, in part, as follows:

I believe the trial court correctly concluded that the allegation of negligence upon which the Bushongs' action is premised was against a government employee acting within the scope of his employment. Accordingly, I respectfully dissent from the reversal of summary judgment that was based upon that conclusion.

. . . [A]ccording to the majority, the prohibition against suing public employees applies only when the complaint, *on its face*, asserts that the allegedly negligent acts were committed "within the scope of the defendant's employment," or words to that effect. I believe the majority's holding in the instant case has transformed subsection (a) into a "magic words"

provision. Consistent with this reasoning, so long as a plaintiff does not make the tactical mistake of describing the complained-of acts by using the phrase "in the scope of employment," then the matter will proceed to trial. . . .

As the majority indicates, subsection (a) provides that a public employee may not be sued personally for undertaking actions that were within the scope of employment. Subsection (b) provides that, when sued for negligence, governmental entities can plead as an affirmative defense that the allegedly negligent act was committed by an employee who was acting outside the scope of employment. Subsection (b) also provides that the plaintiff may amend the complaint in such cases to include an allegation against the employee personally. In my view, subsection (c) does no more than delineate those conditions under which our courts have determined that, in some cases, an employee was not acting within

the scope of employment. [Citations omitted.] Accordingly, the statute, as revised, merely clarifies the earlier version by delineating actions that might take an employee's action outside the scope of employment, and also adds the right to amend the complaint if the governmental entity alleges that the employee was not acting within the scope of employment. . . . I see nothing leading to the conclusion that the legislature intended to add magic words to the landscape.

I pause at this point to express disagreement with another conclusion reached by the majority, i.e., that we may look only to the face of the complaint in determining whether the allegedly tortious acts were committed in the scope of Williamson's employment. . . . My disagreement with the majority on the meaning of those revisions for purposes of adding magic words leads me also to reject this second ramification of that conclusion, *viz*. that courts may not look beyond the complaint in rendering summary judgment on the basis that the defendant was acting within the scope of employment. I discern no persuasive rationale for treating a summary judgment motion differently in this context than it is customarily treated in other contexts. . . .

Proceeding upon these principles, it remains only to determine whether the Bushongs alleged that the complained-of acts were committed within the scope of Williamson's employment. . . . In my view, Williamson's actions, as alleged by the Bushongs, constituted nothing more or less than the disciplining of a recalcitrant student.

. . . .

Accordingly, pursuant to IC § 34-13-3-5, Williamson cannot be sued in his personal capacity. I would affirm the grant of summary judgment in his favor.

HENRY v. HENRY, No. 02A03-0106-CV-203, ___ N.E.2d ___ (Ind. Ct. App. Nov. 28, 2001).
BAKER, J.

Appellant-petitioner Marianne Henry, appeals the trial court's judgment in favor of her former husband, appellee-respondent Michael W. Henry, with respect to the division of marital property. Specifically, she argues that the trial court was obligated to consider and value Michael's unvested interest in certain stock options through his employer that he had not exercised, but could have, as of the final hearing date on the petition for dissolution.

. . . As part of his compensation with the company, Michael periodically received stock options. The options were not forfeitable upon death, disability, lay-off or sale of a business unit. Rather, the long-term incentive plan implemented by GE provided that an employee's unexercised stock options granted in 1994 and 1995 would immediately expire if voluntary termination of employment or termination for cause occurred. The terms of various stock options that were granted to Michael in 1993 contained a similar provision. The options issued during those years were subject to unilateral termination by GE.

. . . .

We have had the occasion to interpret the above statute as it relates to stock options in Hann v. Hann, 655 N.E.2d 566 (Ind. Ct. App. 1995), trans. denied. . . .

. . . [T]his court determined:

> The stock options not exercisable as of the date of separation, and which will become exercisable at a particular date in the future conditioned upon Daniel's continued employment, are not subject to division as marital property. . . . [T]he treatment most consistent with the statutory scheme currently in place in Indiana is to classify only those stock options granted to an employee by his or her employer which are exercisable upon the date of dissolution or separation which cannot be forfeited upon termination of employment as marital property.

[Citation omitted.] . . .

Applying the terminology used in Hann, it is apparent that the options granted to Michael in this circumstance have "matured," inasmuch as he could have exercised them

and converted the options to cash prior to the final hearing. Unlike Hann, Michael's stock options are subject only to limited circumstances of forfeiture, including termination of employment. They are not forfeited in the event of his death or disability. Therefore, while the options may have been both unmatured and unvested in Hann, such is not the case here. The only "contingency" to obtain the value of the options for the benefit of the marital estate was Michael's actual exercise of them. . . . So, inasmuch as Michael had a present right to exercise the GE stock options and obtain their benefit up to the time of the final dissolution hearing, it was error for the trial court not to have included the values of the GE options in the marital estate.

. . . .

FRIEDLANDER and ROBB, JJ., concurred.

BEARD v. BEARD, No. 15A01-0104-CV-128, ___ N.E.2d ___ (Ind. Ct. App. Nov. 30, 2001).
ROBB, J.

[W]e hold that a death during the second portion of a bifurcated dissolution action does not void an order ending the marriage entered during the first phase or deprive the trial court of jurisdiction to complete the action. [Footnote omitted.]

. . . .

BAKER and FRIEDLANDER, JJ., concurred.

CASE CLIPS TRANSFER TABLE

December 14, 2001

This table lists recent grants of transfer by the Indiana Supreme Court for published decisions of the Court of Appeals. It includes Judicial Center summaries of the opinions of the Court of Appeals vacated by the transfers and of the Supreme Court's opinions on transfer.

A CASE CLIPS transfer information feature was suggested by the Justices of the Indiana Supreme Court in response to trial court requests for more accessible information about grants of transfer. The table is prepared with assistance from the Supreme Court Administrator's Office, which sends the Judicial Center a weekly list of transfer grants.

A grant of transfer vacates the opinion of the Court of Appeals: "[i]f transfer be granted, the judgment and opinion or memorandum decision of the Court of Appeals shall thereupon be vacated and held for naught, except as to any portion thereof which is expressly adopted and incorporated by reference by the Supreme Court, and further, except where summarily affirmed by the Supreme Court." Indiana Appellate Rule 11(B)(3).

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
South Gibson School Board v. Sollman	728 N.E.2d 909 26A01-9906-CV-222	Denying student credit for all course-work he performed in the semester in which he was expelled was arbitrary and capricious; summer school is not included within the period of expulsion which may be imposed for conduct occurring in the first semester	9-14-00	
Moberly v. Day	730 N.E.2d 768 07A01-9906-CV-216	Fact issue as to whether son-in-law was employee or independent contractor precluded a summary judgment declaring no liability under respondeat superior theory; and Comparative Fault has abrogated fellow servant doctrine.	10-24-00	11-15-01. 757 N.E.2d 1007. Summary judgment proper as facts show contractor status.
Shambaugh and Koorsen v. Carlisle	730 N.E.2d 796 02A03-9908-CV-325	Elevator passenger who was injured when elevator stopped and reversed directions after receiving false fire alarm signal brought negligence action against contractors that installed electrical wiring and fire alarm system in building. Held: contractors did not have control of elevator at time of accident and thus could not be held liable under doctrine of res ipsa loquitur.	10-24-00	
S.T. v. State	733 N.E.2d 937 20A03-9912-JV-480	No ineffective assistance when (1) defense counsel failed to move to exclude two police witnesses due to state's failure to file witness list in compliance with local rule and (2) failed to show cause for defense failure to file its witness list under local rule with result that both defense witnesses were excluded on state's motion	10-24-00	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Tincher v. Davidson	731 N.E.2d 485 49A05-9912-CV-534	Affirms mistrial based on jury's failures to make comparative fault damage calculations correctly	11-22-00	
Brown v. Branch	733 N.E.2d 17 07A04-9907-CV-339	Oral promise to give house to girlfriend if she moved back not within the statute of frauds.	11-22-00	11-16-01. 758 N.E.2d 48. Statute of Fraud applies to any conveyance not just sales, and so applied here.
New Castle Lodge v. St. Board of Tx. Comm.	733 N.E.2d 36 49T10-9701-TA-113	Fraternal organization which owned lodge building was entitled to partial property tax exemption	11-22-00	
Reeder v. Harper	732 N.E.2d 1246 49A05-9909-CV-416	When filed, expert's affidavit sufficed to avoid summary judgment but affiant's death after the filing made his affidavit inadmissible and hence summary judgment properly granted.	1-11-01	
Holley v. Childress	730 N.E.2d 743 67A05-9905-JV-321	Facts did not suffice to overcome presumption non-custodial parent was fit so that temporary guardianship for deceased custodial parent's new spouse was error.	1-11-01	
Cannon v. Cannon	729 N.E.2d 1043 49A05-9908-CV-366	Affirms decision to deny maintenance for spouse with ailments but who generated income with garage sales	1-11-01	11-16-01. 758 N.E.2d 524. Wife not incapacitated. Depletion of assets ot properly considered in assessing spousal maintenance.
Davidson v. State	735 N.E.2d 325 22A01-0004-PC-116	Ineffective assistance for counsel not to have demanded mandatory severance of charges of "same or similar character" when failure to do so resulted in court's having discretion to order consecutive sentences.	1-17-01	
Mercantile Nat'l Bank v. First Builders	732 N.E.2d 1287 45A03-9904-CV-132	materialman's notice to owner of intent to hold personally liable for material furnished contractor, IC 32-8-3-9, sufficed even though it was filed after summary judgment had been requested but not yet entered on initial complaint for mechanic's lien foreclosure	2-9-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
State Farm Fire & Casualty v. T.B.	728 N.E.2d 919 53A01-9908-CV-266	(1) insurer acted at its own peril in electing not to defend under reservation of rights or seek declaratory judgment that it had no duty to defend; (2) insurer was collaterally estopped from asserting defense of childcare exclusion that was addressed in consent judgment; (3) exception to child care exclusion applied in any event; and (4) insurer's liability was limited to $300,000 plus post-judgment interest on entire amount of judgment until payment of its limits.	2-9-01	
Merritt v. Evansville Vanderburgh School Corp	735 N.E.2d 269 82A01-912-CV-421	error to refuse to excuse for cause two venire persons employed by defendant even though they asserted they could nonetheless be impartial and attentive	2-9-01	
State v. Gerschoffer	738 N.E.2d 713 72A05-0003-CR0116	Sobriety checkpoint searches are prohibited by Indiana Constitution.	2-14-01	
Healthscript, Inc. v. State	724 N.E.2d 265, *rhrg.* 740 N.E.2d 562 49A05-9908-CR-370	Medicare fraud crimes do not include violations of state administrative regulations.	2-14-01	
Vadas v. Vadas	728 N.E.2d 250 45A04-9901-CV-18	Husband's father, whom wife sought to join, was never served (wife gave husband's attorney motion to join father) but is held to have submitted to divorce court's jurisdiction by appearing as witness; since father was joined, does not reach dispute in cases whether property titled to third parties not joined may be in the marital estate.	3-1-01	
N.D.F. v. State	735 N.E.2d 321 No. 49A02-0003-JV-164	Juvenile determinate sentencing statute was intended to incorporate adult habitual criminal offender sequential requirements for the two "prior unrelated delinquency adjudications"; thus finding of two prior adjudications, without finding or evidence of habitual offender-type sequence, was error	3-2-01	
Robertson v. State	740 N.E.2d 574 49A02-0006-CR-383	Hallway outside defendant's apartment was part of his "dwelling" for purposes of handgun license statute.	3-9-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Bradley v. City of New Castle	730 N.E.2d 771 33A01-9807-CV-281	Extent of changes to plan made in proceeding for remonstrance to annexation violated annexation fiscal plan requirement.	4-6-01	
King v. Northeast Security	732 N.E.2d 824 49A02-9907-CV-498	School had common law duty to protect student from criminal violence in its parking lot; security company with parking lot contract not liable to student under third party beneficiary rationale.	4-6-01	
State v. Hammond	737 N.E.2d 425 41A04-0003-PC-126	Amendment of driving while suspended statute to require "validly" suspended license is properly applied to offense committed prior to amendment, which made "ameliorative" change to substantive crime intended to avoid supreme court's construction of statute as in effect of time of offense.	4-6-01	
Buchanan v. State	742 N.E.2d 1018 18A04-0004-CR-167	Admission of pornographic material picturing children taken from child-molesting defendant's home was error under Ev. Rule 404(b).	5-10-01	
McCary v. State	739 N.E.2d 193 49A02-0004-PC-226	Failure to interview policeman/probable-cause-affiant, when interview would have produced exculpatory evidence, was ineffective assistance of trial. Counsel on direct appeal was ineffective for noting issue but failing to make record of it via p.c. proceeding while raising ineffective assistance in other respects. Post-conviction court erred in holding res judicata applied under *Woods v. State* holding handed down after direct appeal..	5-10-01	
Equicor Development, Inc. v. Westfield-Washington Township Plan Comm.	732 N.E.2d 215 No. 29A02-9909-CV-661	Plan Commission denial of subdivision approval was arbitrary and capricious, notwithstanding it was supported by evidence, due to Commission's prior approvals of numerous subdivision having same defect.	5-10-01	11-15-01. 758 N.E.2d 34. Whether disapproval was pretextual was irrelevant to arbitrary and capricious issue, not commission was estopped from relying on absence of parking at last minute when defect was formal at best.

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Martin v. State	744 N.E.2d 574 No 45A05-0009-PC-379	Finds ineffective assistance of appellate counsel for waiving issue of supplemental instruction given during deliberations on accomplice liability.	6-14-01	
Catt v. Board of Comm'rs of Knox County	736 N.E.2d 341 (Ind. Ct. App. 2000) No. 42A01-9911-CV-396	County had duty of reasonable care to public to keep road in safe condition, and County's knowledge of repeated washs-outs of culvert and its continued failure to repair meant that wash-out due to rain was not a "temporary condition" giving County immunity.	6-14-01	
Ind. Dep't of Environmental Mgt. v. Bourbon Mini Mart, Inc.	741 N.E.2d 361 No. 50A03-9912-CV-476	(1) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against automobile dealership; (2) third-party plaintiffs were collaterally estopped from pursuing indemnity claim against gasoline supplier pursuant to pre-amended version of state Underground Storage Tank (UST) laws; (3) amendment to state UST laws, which eliminated requirement that party seeking contribution toward remediation be faultless in causing leak, did not apply retroactively so as to allow contribution for response costs that were incurred before its effective date; and (4) third-party plaintiffs' action against gasoline supplier to recover ongoing remediation costs was not time barred.	6-14-01	
In re Ordinance No. X-03-96	744 N.E.2d 996 02A05-0002-CV-77	Annexation fiscal plan must have noncapital services estimates from a year after annexation and capital improvement estimates from three years after annexation.	7-18-01	
Corr v. Schultz	743 N.E.2d 1194 71A03-0006-CV-216	Construes uninsured motorist statutes to require comparison of what negligent party's insurer actually pays out with amount of insured's uninsured coverage; rejects prior Court of Appeals decision, *Sanders*, 644 N.E.2d 884, that uninsured statutes use comparison of negligent party's liability limits to uninsured coverage limit ("policy limits to policy limits" comparison); notes that not-for-publication decision from same accident, *Corr v. American Family Insurance*, used *Sanders* to hold that the correct analysis was to "compare the $600,000 per accident bodily injury liability limit under the two policies covering Balderas [negligent driver] to the $600,000 per accident underinsured motor vehicle limit of the policies under which Janel [Corr] was an insured; transfer also granted 7-18-01 in this unreported *Corr* case.	7-18-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Friedline v. Shelby Insurance Co.	739 N.E.2d 178 71A03-0004-CV-132	Applies Indiana Supreme Court cases finding ambiguity in liability policies' exclusions for "sudden and accidental" and "pollutant" as applied to gasoline to hold that "pollutants" exclusion as applied to carpet installation substances was ambiguous and that insurance company's refusal to defend, made with knowledge of these Supreme Court ambiguity decisions, was in bad faith.	7-18-01	
St. Vincent Hospital v. Steele	742 N.E.2d 1029 34A02-0005-CV-294	IC 22-2-5-2 Wage Payment Statute requires not only payment of wages at the usual frequency (e.g., each week, etc.) but also in the correct amount, so Hospital which relied on federal legislation and federal regulatory interpretation for its refusal to pay physician contract compensation amount was liable for attorney fees and liquidated damages under Statute.	7-18-01	
Smith v. State	748 N.E.2d 895 29A02-00100PC-640	Error to find PCR laches when petition was filed within 27 days of sentencing and all ensuing delays due to Public Defender; guilty plea to six theft counts, for stealing a single checkbook containing the six checks, was unintelligent due to counsel's failure to advise of "single larceny" rule; the theft of the checkbook and ensuing deposits of six forged checks at six different branches of the same bank in the same county "within a matter of hours" were a "single episode of criminal conduct" subject to limits on consecutive sentencing and counsel's failure to discuss the single episode limit also rendered plea unintelligent.	7-19-01	
Martin v. State	748 N.E.2d 428 03A01-0012-PC-412	Holds that no credit for time served is earned by one on probation as a condition of probation, distinguishing *Dishroon v. State* noting 2001 amendment providing for such credit is inapplicable.	8-10-01	
State Bd. of Tax Comm'rs v. Garcia	743 N.E.2d 817 (Tax Ct. 2001) 71T10-9809-TA-104	Calculation by which Grade A-6 assessment was reached was not supported by regulations and hence was arbitrary and capricious. Swimming pool assessment as "A" rather than "G" was likewise outside regulations and reversed.	8-13-01	
Dunson v. Dunson	744 N.E.2d 960 (Ind. Ct. App. 2001) 34A02-0006-CV-375	Construes emancipation statute to require only that child not be under the care or control of either parent without any requirement he also be able to support himself without parental assistance.	8-13-01	

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
D'Paffo v. State	749 N.E.2d 1235 (Ind. Ct. App. 2001) 28A004-0010-CR-442	Child molesting instruction's omission of element of intent to gratify sexual desires when touching was fundamental error, not waived by failure of appellant to object, notwithstanding defense that victim was never touched at all. When witnesses had been cross-examined and given chances to explain prior inconsistent statements, the statements themselves were properly excluded as impeachment, Evidence Rule 613.	8-24-01	
Farley Neighborhood Association v. Town of Speedway	747 N.E.2d 1132 49S02-0101-CR-43	Continuation of 45-year-old 50% surcharge on sewage service to customers outside municipality was arbitrary, irrational, and discriminatory..	9-20-01	
Neher v. Hobbs	752 N.E.2d 48 92A04-0008-CV-316	Trial judge erred in requiring new trial when jury found defendant negligent but awarded $ 0 damages, as jury clearly found injury was preexisting.	9-6-01	
Hall Drive Ins, Hall's Guesthouse v. City of Fort Wayne	747 N.E.2d 638 02A04-0005-CV-219	Restaurant was subject to exception to City's anti-smoking ordinance.	9-20-01	
Hall Drive Ins, Triangle Park v. City of Fort Wayne	747 N.E.2d 643 02A03-0005-CV-189	Companion case to *Hall Drive Ins, Hall's Guesthouse v. City of Fort Wayne*, above	9-20-01	
Ind. Dep't of Revenue v. Deaton	738 N.E.2d 695 73A01-0002-CV-49	State income tax warrant's filing with county clerk does not create a judgment for proceedings supplemental.	9-26-01	9-26-01. 755 N.E.2d 568. Tax judgment lien may be collected through proceedings supplemental without first filing suit and obtaining a judgment of foreclosure.
Johnson v. State	47A04-0103-PC-112	Under Appellate Rule 49 an appeal may be dismissed for failure to file an appendix.	10-22-01	10-22-01. No. 47S04-0110-PC-478. The failure to file an appendix with the appellate brief is not necessarily automatic cause for dismissal.
Mangold v. Ind. Dept. Natural Resources	720 N.E.2d 424 78A01-9903-CV-88	No duty owed by school to student when student not on school property.	10-25-01	10-25-01. No. 78S01-0110-CV-479. General duty for school to exercise reasonable care for and supervision of students should not be "rearticulated" in terms of a given set of facts, as such may erroneously constrict the duty's scope, as here with the "school property" ruling.
Desjardins v. State	751 N.E.2d 323 31A01-0002-CR-60	Evidence Rule 106's doctrine of completeness does not apply to videotape.	11-02-01	12-06-01. No. 31S01-0111-CR-560. "[A]ll modes of conveying information, including videotapes, constitute writings or recordings for purposes of Rule 106, even if they are defined by Rule 1001 as 'photographs.'"

Case Name	N.E.2d citation, Ct. Appeals No.	Court of Appeals Holding Vacated by Transfer Grant	Transfer Granted	Supreme Court Opinion After Transfer
Hinojosa v. State 752 N.E.2d 107 45A05-0010-CR-450	743 N.E.2d 787 45A05-0010-CR-450	Third party may obtain grand jury transcipts based on statutory "particularized need," as here with police officer "whistleblower."	11-15-01	
Bowers v. Kushnic	743 N.E.2d 787 45A04-0004-CV-168	Under rule that, if the insured has done everything within her power to effect the change of beneficiary, substantial compliance with policy requirements can be sufficient to change the beneficiary, facts were not sufficient to show intent to change.	11-15-01	
Family and Social Services Admin. v. Schluttenhofer	750 N.E.2d 429 No. 91A02-0010-CV-638	Payment for medical expenses from injured's employer's policy was subject to IC 34-51-2-19 proportionality reduction of Medicaid lien.	11-15-01	
Poananski v. Hovath .	749 N.E.2d 1283 No. 71A03-0101-CV-34	For summary judgment, the very fact that a dog bit a human without provocation is evidence from which a reasonable inference can be made that the dog had vicious tendencies, and it may be further inferred that if the dog had vicious tendencies based on this one incident, then a question of fact exists as to whether the dog owner knew or should have known of these tendencies	11-15-01	
Stegemoller v. AcandS, Inc.	749 N.E.2d 1216 No. 49A02-0006-CV-390	Wife of insulator who worked with asbestos did not qualify as a "bystander" who was reasonably expected to be in the vicinity of the product "during its reasonably expected use," and thus, she could not recover under Indiana Product Liability Act (IPLA).	11-15-01	
Ringham v. State	753 N.E.2d 29 No. 49A02-0009-CR-577	Reversible error not to have complied with Marion Superior statute which required an elected judge return to handle trial when prompt objection was made to master commissioner's presiding.	12-13-01	

CASE CLIPS is published by the
Indiana Judicial Center
National City Center - South Tower, 115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417
Jane Seigel, Executive Director
Michael J. McMahon, Director of Research
Thomas R. Hamill, Staff Attorney
Thomas A. Mitcham, Production
The Judicial Center is the staff agency for the Judicial Conference of Indiana and serves Indiana Judges and court personnel by providing educational programs, publications and research assistance.